IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

SPINE CARE DELAWARE, LLC Plaintiff, v. UNITED STATES AUTOMOBILE ASSOCIATION, USAA GENERAL INDEMNITY COMPANY, USAA CASUALTY INSURANCE COMPANY, AND GARRISON PROPERTY AND CASUALTY INSURANCE COMPANY Defendants.	)	C.A. No.: N18C-01-253 EMD CCLD

Submitted: January 29, 2020
Decided: June 18, 2020

Upon Plaintiff Spine Care Delaware, LLC's Motion for Class Certification
GRANTED.

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DAVIS, J.

I. INTRODUCTION

On January 23, 2018, Plaintiff Spine Care Delaware, LLC ("Spine Care") filed suit against United States Automobile Association, USAA General Indemnity Company, USAA Casualty Insurance Company, and Garrison Property and Casualty Insurance Company

(collectively, the "Defendants"). On or about August 6, 2019, Spine Care filed its Amended Complaint. Defendants answered the Amended Complaint on August 24, 2019. In the Amended Complaint, Spine Care asserts causes of action for declaratory relief, breaches of contracts, bad faith breaches of insurance contracts, and violations of 21 *Del. C.* §§ 2118 and 2118B. The basis for these claims are Defendants purported: (i) failure to pay statutory interest on overdue Personal Injury Protection ("PIP") claims; (ii) failure to conclude investigation within the statutory 30-day deadline and subsequently denying payment on the ground that PIP limits have been exhausted; and (iii) delay and underpayment of other claims covered under PIP.[1] Defendants deny all claims asserted in Spine Care's Amended Complaint.[2]

Spine Care filed its Plaintiff Spine Care Delaware, LLC's Motion for Class Certification (the "Motion) on or about July 29, 2019. The Motion centers on the Defendants' alleged untimely payment of covered medical expenses to Spine Care and other health care providers. S contends that the statutory interest owed on overdue PIP-related medical expenses is owed to Plaintiff and others in Plaintiff's class.[3] Defendants filed their Defendants' Answering Brief in Opposition to Plaintiff's Motion for Class Certification (the "Answer") on October 7, 2019. On November 13, 2019, Spine Care filed its Plaintiff Spine Care Delaware, LLC's Reply Brief in Support of its Motion for Class Certification (the "Reply"). The Court held a hearing on the Motion, the Answer and the Reply on January 29, 2020. After the hearing the Court took the Motion under advisement.

[1] Am. Compl. at ¶¶ 16-20.
[2] Am. Answ. at pp. 8-10.
[3] Pl.'s Op. Br. at pp. 1-3.

After consideration of the Motion, the Answer, the Reply, the arguments made at the hearing and the entire record of this civil action, the Court will **GRANT** the Motion for the reason set forth more fully below.

II. RELEVANT FACTS

A. PARTIES

Spine Care is a surgical center located in Newark, Delaware. Spine Care is a state-of-the-art facility where Delaware surgeons, who are independent of Spine Care, come to treat their patients. Spine Care's practice focuses on minimally invasive spinal injections for patients. These patients are often individuals injured in auto accidents.[4]

Defendants are a group of Texas corporations. Each is engaged in the business of insurance and all regularly sells automobile insurance within the State of Delaware.[5]

B. RELEVANT FEES

Spine Care contends that there are two relevant fees in this case: (i) the facility fee for each operative session; and (ii) the anesthesia services fee. The facility fee encompasses—

> preoperative phone calls, patient registration and history, patient physicals, medications, medical supplies, postoperative care, registered nurses, x-ray technicians and medical technicians, other staffing, fixed expenses, and overhead, and so forth.[6]

The anesthesia services fees are for providing certified nurse anesthetists who work alongside the surgeons.[7] Spine Care also addresses a third fee (described as the physician's professional services fee) but does not claim that this fee is relevant in this matter because the physicians are not included as a part of Spine Care's purported class.[8]

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[4] *Id.* at p. 4.
[5] Compl. at ¶¶ 5-8.
[6] Pl.'s Op. Br. at p. 5.
[7] *Id.*
[8] *Id.*

C. INSURANCE INDUSTRY CUSTOM: EORS

Spine Care asserts that there exists a customary practice in the insurance industry for handling medical bills. Through this customary practice, insurance companies communicate coverage determinations to care providers through the use of explanatory written forms. These explanatory written forms are referred to as "Explanation of Reimbursement" forms ("EORs"). EORs record the insured's identity, the provider's identity, the date medical services were rendered, the nature of the medical services, the date that the insurance provider received the corresponding medical bill, whether the bill was paid (in whole or in part), an explanation if not paid in full, and the date the EOR itself was printed. Spine Care asserts that the date the EOR was printed is important because it provides a date when Defendants, using internal policies, determined to pay providers. Using this reasoning, the payment date is one day before the EOR is printed.[9]

D. STATUTORY FRAMEWORK

Spine Care uses Delaware's PIP statute[10] as the statutory framework to demonstrate that Spine Care and those situated in Spine Care's proposed class are owed monetary damages by Defendants. Delaware's PIP statute provides that covered claims must be paid within 30 days of the insurer's receipt of the claim.[11] Additionally, Delaware's PIP statute requires interest to be rendered on unpaid benefits to claimants for failure to comply with this "30-day rule."[12] Section 2118B(c) reads as follows:

> (c) When an insurer receives a written request for payment of a claim for benefits pursuant to § 2118(a)(2) of this title, the insurer shall promptly process the claim and shall, no later than 30 days following the insurer's receipt of said written request for first-party insurance benefits and documentation that the treatment or

[9] *Id.* at pp. 6-7 ("Upshaw Bill").
[10] 21 *Del. C.* § 2118.
[11] 21 *Del. C.* § 2118B(c).
[12] *Id.*

> expense is compensable pursuant to § 2118(a) of this title, make payment of the amount of claimed benefits that are due to the claimant or, if said claim is wholly or partly denied, provide the claimant with a written explanation of the reasons for such denial. **If an insurer fails to comply with the provisions of this subsection, then the amount of unpaid benefits due from the insurer to the claimant shall be increased at the monthly rate of:**
>
> > (1) One and one-half percent from the thirty-first day through the sixtieth day; and
> >
> > (2) Two percent from the sixty-first day through the one hundred and twentieth day; and
> >
> > (3) Two and one-half percent after the one hundred and twenty-first day.[13]

Under this subsection, therefore, insurers have a statutory obligation to pay interest on unpaid benefits for any failure to comply with the "30-day rule" of Delaware's PIP statute.

E. DELAWARE DOI MARKET CONDUCT EXAMINATION AND REPORT

Section 318 of Title 18 empowers the Delaware Department of Insurance ("DOI") to examine the conduct and affairs of insurers.[14] In April 2017, DOI conducted an examination and developed a report with the following scope of examination:

> This examination focused on the activities of United States Automobile Association, USAA Casualty Insurance Company, USAA General Indemnity Company, and Garrison Property and Casualty Insurance Company, (sic) (hereinafter referenced collectively as "USAA") related to private passenger auto Personal Injury Protection (PIP) claims. More specifically, a targeted review of medical bills submitted to the Company versus what the Company paid was performed.[15]

DOI conducted this examination with a random sampling of Defendants' claim files ranging from July 1, 2015 through April 30, 2017.[16] DOI's examination revealed 21 medical

[13] *Id.* (emphasis added).
[14] 18 *Del. C.* § 318.
[15] Pl.'s Op. Br. at pp. 11-12; *see also* Pl.'s Op. Br., Ex. K at pp. 408-409 (Delaware Department of Insurance Market Conduct Examination Report, April 30, 2017).
[16] Pl.'s Op. Br. at p. 12.

expense related PIP claims on which the Defendants owed, but failed to pay, statutory interest under 21 *Del. C.* § 2118B.[17]

F. SPINE CARE'S PROPOSED CLASS DEFINITION

Spine Care seeks certification of a class action for the statutory interest claim under 21 *Del. C.* § 2118B(c). Spine Care proposes the following class definition:

> All persons or entities who, since September 25, 2014, submitted claims for medical-expense-related Personal Injury Protection (or "PIP") benefits under Delaware auto policies issued by United Services Automobile Association, USAA General Indemnity Company, USAA Casualty Insurance Company or Garrison Property and Casualty Insurance Company, where (i) the claim was not disputed by the insurer on grounds of insufficient documentation within 30 days of receipt; (ii) the claim was not paid by the insurer within 30 days of receipt; and (iii) though ultimately paid in whole or part, the insurer made no payment of statutory interest on the claim.[18]

III. PARTIES' CONTENTIONS

A. MOTION

Spine Care asserts that it is entitled to and seeks certification of a plaintiff class under Civil Rule 23 for statutory interest claims under 21 *Del. C.* § 2118B(c).[19] Spine Care contends that: (i) that Spine Care is a proper "Claimant" under § 2118B;[20] (ii) the two examples of patients provide evidence that Spine Care is owed statutory interest;[21] (iii) Spine Care's random sampling proves that Defendants owe statutory interest to others in the proposed class;[22] (iv) Rule 23(a) standards have been met,[23] and (iv) the Civil Rule 23(b)(3) standards have been met.[24]

[17] *Id.* at pp. 10-11.
[18] Pl.'s Op. Br. at p. 1.
[19] *Id.*
[20] *Id.* at pp. 2-3.
[21] *Id.* at p. 6.
[22] *Id.* at pp. 12-13, 14.
[23] *Id.* at p. 20.
[24] *Id.* at p. 26.

B. OPPOSITION

Defendants argue that Spine Care is not entitled to class certification. Defendants claim that: (i) Spine Care is not a member of the class it seeks to represent;[25] (ii) Spine Care's proposed class definitions are fatally flawed;[26] (iii) there are no common questions that predominate over individual ones;[27] (iv) Spine Care cannot meet the adequacy and typicality requirements;[28] (v) Spine Care cannot meet the superiority requirement;[29] (vi) Spine Care relies upon inapplicable cases;[30] and (vii) certification would deprive Defendants of their due process rights.[31]

IV. STANDARD OF REVIEW

Civil Rule 23, governing Delaware class actions,[32] is substantially similar to the federal civil rule[33] on class actions.[34] "Where . . . the Superior Court's Rules of Civil Procedure closely track the Federal Rules of Civil Procedure, cases interpreting the federal rules are persuasive authority for [the Court's] construction purposes."[35]

Delaware follows a two-step analysis to certify a class. The first step requires that a class satisfy the following requirements in Civil Rule 23(a): (i) numerosity, (ii) commonality, (iii) typicality, and (iv) adequacy.[36] If the Civil Rule 23(a) requirements are met, the second step is to properly fit the action "within the framework provided for in [Civil Rule 23(b)]."[37] Civil Rule

[25] Defs.' Br. in Opp. at p. 25.
[26] *Id.* at p. 25.
[27] *Id.* at p. 28.
[28] *Id.* at p. 30.
[29] *Id.* at p. 31.
[30] *Id.* at p. 33.
[31] *Id.* at p. 35.
[32] Del. Super. Civ. R. 23
[33] Fed. R. Civ. P. 23.
[34] *Green v. GEICO Gen. Ins. Co.*, 2018 WL 1956287, at *6 (Del. Super. Apr. 24, 2018), appeal refused, 187 A.3d 553 (Del. 2018).
[35] *Appriva S'holder Litig. Co., LLC v. EV3, Inc.*, 937 A.2d 1275, 1286 (Del. 2007) (citing *Hoffman v. Cohen*, 538 A.2d 1096 (Del. 1988)).
[36] Del. Super. Civ. R. 23(a).
[37] *Wit Capital Group, Inc. v. Benning*, 897 A.2d 172, 179 (Del. 2006).

23(b) sets forth three disjunctive requirements: (i) prosecution of separate actions would create a risk of (a) inconsistent or varying adjudications or (b) adjudications as to one member of the class would be dispositive as to members that are not parties to the adjudications; (ii) the party opposing the class has acted or refused to act in a manner generally applicable to the class, thereby making appropriate final equitable relief or corresponding declaratory relief with respect to the class as a whole; or (iii) cases where common issues of law or fact predominate.[38]

The party moving for class certification bears the burden of establishing that the class meets the Civil Rule 23(a) and (b) requirements.[39]

V. DISCUSSION

A. REPRESENTATIVE PLAINTIFF REQUIREMENT

Before determining whether the Motion satisfies Rule 23(a) and Rule 23(b)(3) standards, the Court must first determine whether Spine Care is in fact a member of the class it seeks to certify and represent. "[A] class representative must be part of the class and 'possess the same interest and suffer the same injury' as the class members."[40]

i. Spine Care's Class Definition

Spine Care defines its proposed class as follows:

> All persons or entities who, since September 25, 2014, submitted claims for medical-expense-related Personal Injury Protection (or "PIP") benefits under Delaware auto policies issued by United Services Automobile Association, USAA General Indemnity Company, USAA Casualty Insurance Company or Garrison Property and Casualty Insurance Company, where (i) the claim was not disputed by the insurer on grounds of insufficient documentation within 30 days of receipt; (ii) the claim was not paid by the insurer within 30 days of receipt; and (iii) though ultimately paid in whole or part, the insurer made no payment of statutory interest on the claim.[41]

[38] Del. Super. Civ. R. 23(b).
[39] *Wal–Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551–2552 (2011).
[40] *East Tex. Motor Freight Sys., Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977).
[41] Pl.'s Op. Br. at p. 1.

ii. Spine Care's Class Definition Requirements

Spine Care's definition requires five key requirements that need to be met for inclusion into the class:

1. The class member submitted a claim for medical expense related PIP benefits to one of the Defendants.

2. The class member submitted the claim between Sept. 25, 2014 to Present.

3. The claim was not disputed by the applicable Defendant on insufficient grounds within 30 days.

4. The applicable Defendant eventually paid the claim, in whole or in part, but no amount was paid by the Defendant within 30 days.

5. The applicable Defendant paid no statutory interest on the claim.

iii. Upshaw

Spine Care provides two examples that Spine Care contend demonstrates that it qualifies as a member of the class definition. The Court finds one most relevant—Ms. Upshaw. In the materials provided to this Court, Spine Care shows that Ms. Upshaw underwent a medical procedure at Spine Care's facility on August 26, 2016.[42] The record indicates that two bills were generated from this procedure: (1) the anesthesia fee[43] and (2) the facility fee.[44]

On December 29, 2016, Defendants received the bill for the anesthesia fee.[45] On January 1, 2017, Defendants paid the full amount.[46] On December 29, 2016, Defendants received the bill for the facility fee.[47] On January 4, 2017, Defendants disputed the bill for the facility fee and denied

[42] Pl.'s Op. Br., Ex. D.
[43] *Id.*
[44] Pl.'s Op. Br., Ex. E.
[45] Pl.'s Op. Br., Ex. D.
[46] *Id.*
[47] Pl.'s Op. Br., Ex. E.

coverage.[48] The explanation provided for disputing the bill for the facility fee and denying coverage stated that—

> In order to make a reimbursement decision, documentation is needed to support the medical necessity for continued care or treatment. Documentation must include all records, such as patient history, evaluations, test results, progress notes, prescriptions and treatment plans.[49]

On February 3, 2017, Defendants paid the facility fee in full and without statutory interest.[50]

The Court notes that Spine Care submitted the claim for Ms. Upshaw to Defendant for medical-expense related PIP benefits and that this claim was submitted in the time-frame specified in Spine Care's class definition. Although the claim was eventually paid in full on February 3, 2017 and did not include any payments of interest, it appears that Defendants "disputed" the claim initially around January 4, 2017. Because this claim was "disputed" initially, Spine Care's claim related to Ms. Upshaw does not seem to meet the class definition—specifically with respect to the third requirement. Spine Care, however, contends that, since this "dispute" by Defendants is precluded as a matter of law under *Spine Care Delaware, LLC v. State Farm*,[51] Defendants acknowledged that the facility fee bill was compensable on January 4, 2020.

iv. Spine Care Delaware, LLC v. State Farm

Spine Care Delaware, LLC v. State Farm was a case involving claim preclusion and waiver of defense. Specifically, the case involved the issue of whether State Farm could forgo its prior contention for denying coverage—that it did not pay Spine Care's facility fee because of Spine Care's lack of a license to operate as a free-standing surgical facility—and later contend

[48] *Id.*
[49] *Id.* at p. 2.
[50] Pl.'s Op. Br., Ex. F.
[51] *Spine Care Delaware, LLC v. State Farm Mut. Auto. Ins. Co.*, 2007 WL 495899 (Del. Super. Aug. 12, 2010).

that the facility fee was not a reasonable or necessary medical expense. The parties agreed to certain material facts:

> They agree that State Farm did not always respond to claims for coverage of facility fees within the 30-day time frame set forth in Delaware's PIP statute. They also agree that State Farm often denied coverage of the facility fee based on Spine Care's lack of a license to operate as a free-standing surgical facility. State Farm has now abandoned the contention that the licensing question was a valid basis for denial of coverage. It now contends that the facility fee was not a reasonable or necessary medical expense.[52]

On a Motion for Summary Judgment, Spine Care argued that State Farm waived the right to take any position other than the position taken within the statutory 30-day time frame. The Court granted the Motion and "[t]he Court conclude[d] that a PIP carrier is precluded from shifting its position on defense of a denial after the 30 days expires."[53]

Spine Care introduces the following language from that case in this Motion to support its contention that the "dispute" over the facility fee by the Defendants is precluded:

> The facility fee was part of Spine Care's medical fees, and was presented as such, not as a separate bill unrelated to medical treatment. State Farm also argues that the 30-day limit begins to run only after the carrier receives documentation that the claim is compensable, and that it never received such documentation regarding the facility fee. However, State Farm paid the medical fee based on paperwork showing the type of treatment received as well as the date and time.[54]

Although omitted in the block quote, a sentence relevant to this issue immediately follows this statement: "State Farm was unable to identify what other information was pertinent to payment of the facility fee, and thereby acknowledged that the relevant documentation was provided."[55]

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[52] *Id.* at *1.
[53] *Id.* at *3.
[54] *Id.*
[55] *Id.*

The Court in *Spine Care Delaware, LLC v. State Farm* reasoned that State Farm's only contention was regarding the licensure of the facility and the absence of a contention that relevant documentation was not provided was otherwise an admission that State Farm received the relevant documentation. The facility fee was compensable because State Farm raised no other reason for denial at the time of the denial and State Farm's claim regarding the licensure of the facility was no longer an issue.

The Upshaw claim presents a similar situation. Defendants contended that "[i]n order to make a reimbursement decision, documentation is needed to support the medical necessity for continued care or treatment."[56] However, the determination of medical necessity and a request for documents proving such are not a valid purpose for which to deny coverage of a facility bill. Defendants have no valid basis to deny coverage for a facility fee unless Defendants take the position that a facility was not medically necessary for the procedure and that both the procedure and administration of anesthesia should have been performed outdoors.

For the purposes of Plaintiff's class definition requiring that "the claim was not disputed by the insurer on grounds of insufficient documentation within 30 days of receipt," any instances identified by the parties where a bill for a facility fee was disputed for lack of documentation to determine medical necessity can be considered undisputed and compensable in the absence of any other reason for denying coverage. As such, Spine Care has met the Representative Claim Requirement.

[56] Pl.'s Op. Br., Ex. E at p. 2.

B. RULE 23(A) STANDARDS

A trial court may certify a class only if "the trial court is satisfied, after a rigorous analysis, that the prerequisites of Civil Rule 23(a) have been satisfied . . . ."[57] "Frequently that 'rigorous analysis' will entail some overlap with the merits of the plaintiff's underlying claim."[58] "[T]he class determination generally involves considerations that are enmeshed in the factual and legal issues comprising the plaintiff[s'] cause of action.'"[59]

i. Numerosity

First, a class must be "so numerous that joinder of all members is impracticable" in order to meet the numerosity requirement.[60] "Although there is no numerical cutoff under the numerosity requirement, numbers in the proposed class in excess of forty, and particularly in excess of one hundred, have sustained the numerosity requirement."[61] "Delaware courts have held that in determining whether joinder of class members would be impractical depends on the circumstances surrounding the case and not merely the number of class members."[62] Courts look to the "litigational inconvenience" of bringing separate actions versus a class action to assess impracticability.[63]

Spine Care asserts that "[s]tanding alone, the findings within the [DOI's] April 2017 Market Conduct Examination strongly suggest that the numerosity threshold has been met."[64] Additionally, Spine Care claims that "[t]he data derived from the random file sampling in this case - data that projects to a class of roughly 110 members exclusive of the DOI's findings [in

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[57] *Wal–Mart Stores, Inc.*, 131 S.Ct. at 2551–2552 (quoting *General Telephone Co. of Southwest v. Falcon*, 102 S.Ct. 2364 (1982)).
[58] *Id.*
[59] *Id.* (quoting *General Telephone Co. of Southwest v. Falcon*, 102 S.Ct. 2364 (1982)).
[60] Del. Super. Civ. R. 23(a).
[61] *Smith v. Hercules, Inc.*, 2003 WL 1580603, at *4 (Del. Super. Jan. 31, 2003)
[62] *Id.*
[63] *Id.*
[64] Pl.'s Op. Br. at pp. 21-22.

the DOI April 2017 Market Conduct Examination Report]" shows evidence that the numerosity requirement has been met.[65] Defendants contend that "Defendants might at best owe interest to putative class members on only 0.28% of bills."[66] Liquidating the number of cases though seems to be a matter for later determinations and not one for class certification. At this point, therefore, the Court finds that the numerosity standard is satisfied.

ii. Commonality

"[T]here [must be] questions of law or fact common to the class" in order to meet the commonality requirement.[67] In addition, Spine Care must "have suffered the same injury."[68] Finally, Spine Care's claims must "depend upon a common contention . . . that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke."[69]

The common contention shared by class members in this Motion is that Defendants failed to pay statutory interest on PIP claims that were paid late. The "determination of [this] truth or falsity will resolve [the] issue that is central to the validity of [each claim in this class] in one stroke."[70]

Defendants contend that "[i]f individualized proof is needed, there is no commonality" and that "[Spine Care] cannot possibly prove with common, classwide evidence that Defendants failed to pay timely the properly documented and reasonable healthcare bills of each and every class member."[71] While the Court agrees with the general premise, the Court does not see how this "burden" exists with respect to claims disputed on the basis of facility fees. Discovery

[65] *Id.* at p. 22.
[66] Defs. Br. in Opp. at p. 2.
[67] Del. Super. Civ. R. 23(a).
[68] *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 148 (1982).
[69] *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011).
[70] *Id.*
[71] Defs.' Br. in Opp. at p. 29.

would be very narrow and limited and certainly would not overwhelm the process. Moreover, here, the focus is on the common question of fact.

A Maryland District Court case, *Bulmash v. Travelers Indemnity Co.*,[72] also found that the commonality requirement for class certification was satisfied with the plaintiff's assertion that the insurer failed to tender payment of statutory interest on personal injury protection (PIP) claims that it paid late.[73] The *Bulmash* Court noted that "[f]actual differences among the class members identified by defendant [...] do not preclude certification [under the commonality requirement] because 'the class members share the same legal theory.'"[74]

Here, despite Defendants' assertion that commonality is invalidated if individualized proof is needed for each class member's claim, it is clear that the class members all share the same legal theory. The legal theory being that Defendants failed to pay statutory interest on PIP claims that were paid late. And, as discussed above, there appears to be no logical basis for Defendants to render payment for the surgical procedure and also deny coverage of facility fees for a lack of documentation as it relates to Defendants' alleged need to determine the medical necessity of a facility for surgical procedures. As such, this Court finds that the commonality standard is satisfied.

iii. Typicality

"[T]he claims or defenses of the representative parties [must be] typical of the claims or defenses of the class" in order to meet the typicality requirement.[75]

[72] *Bulmash v. Travelers Indemnity Co.*, 257 F.R.D. 84 (D. Md. 2009).
[73] *Id.* at p. 88.
[74] *Id.* (citing *Peoples v. Wendover Funding, Inc.*, 179 F.R.D. 492, 498 (D. Md. 1998).
[75] Super Ct. Civ. R. 23(a).

Spine Care states that its claim is that, under § 2118B(c), Defendants owes statutory interest for failure to pay a claim within 30 days after receipt.[76] The claim of the purported class is identical.[77]

Defendants suggest that Spine Care cannot satisfy this standard because "[Spine Care] is not a member of the class is seeks to represent" and "the very nature of the claims here would require adjudication of individual issues."[78] However, the standard requires a determination of whether the claims by both the representative party and the class are similar. The claims are identical. Accordingly, the Court finds that the typicality standard is satisfied.

iv. Adequacy

Finally, in order to meet the adequacy requirement, "the representative parties [must] fairly and adequately protect the interests of the class."[79] A "conflict concerning the allocation of remedies amongst class members with competing interest can be fundamental and can thus render a representative plaintiff inadequate."[80]

It is not known that there are competing interests or any conflicts regarding allocation of remedies between the class members. In light of the experience Spine Care's counsel has in litigating class actions, the Court is comfortable that counsel will fairly and adequately protect the interests of the class. The Court, therefore, finds that the adequacy standard has been satisfied.

[76] Pl.'s Op. Br. at pp. 1-3.
[77] *Id.*
[78] Defs.' Br. in Opp. at p. 31.
[79] Del. Super. Civ. R. 23(a).
[80] *Dewey v. Volkswagen Aktiengesellschaft*, 681 F.3d 170, 183 (3d Cir. 2012) (citing *Ortiz v. Fibreboard Corp*., 527 U.S. 815, 857 (1999)).

C. RULE 23(B)(3) STANDARDS

i. Predominance

Under Civil Rule 23(b)(3), predominance is satisfied if:

> The Court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members [...]. The matter pertinent to the findings include:
>
> (A) The interest of members of the class in individually controlling the prosecution or defense of separate actions;
>
> (B) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
>
> (C) The desirability or undesirability of concentrating the litigation of the claims in the particular forum;
>
> (D) The difficulties likely to be encountered in the management of class action.[81]

The Court finds that the common question of whether Defendants failed to pay statutory interest on PIP claims that were paid late predominates over any questions affecting only individual members. While there may be individual questions for certain claimants as to whether they meet Spine Care's class definition, this Court does not find that these individual questions predominate over whether Defendants failed to pay statutory interest on PIP claims that were paid late. Additionally, any individual computation of damages, if necessary, does not predominate over the whether the Defendants failed to pay statutory interest on PIP claims that were paid late. "[T]he individual factual determinations that must be made, including the amount

[81] Del. Super. Civ. R. 23(b).

of interest to which each claimant is entitled, can be made by reference to records and objective criteria [. Thus,] the predominance requirement is satisfied."[82]

Defendants argue that Spine Care cannot overcome its burden to "prove with common, class-wide evidence that Defendants failed to pay timely the properly documented and reasonable healthcare bills of each and every class member."[83] However, through discovery, it should be relatively simple to discover which bills for facility fees were disputed for documentation relating to medical necessity and which bills that were undisputed were paid late. As such, this Court finds that the predominance standard is satisfied.

ii. Superiority

Civil Rule 23(b)(3)'s requirement for superiority is satisfied if:

> The Court finds [...] that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matter pertinent to the findings include:
>
> > (A) The interest of members of the class in individually controlling the prosecution or defense of separate actions;
> >
> > (B) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
> >
> > (C) The desirability or undesirability of concentrating the litigation of the claims in the particular forum;
> >
> > (D) The difficulties likely to be encountered in the management of a class action.[84]

Defendants contend that "a class action would not offer significant efficiencies over individual trials[] because the issues necessary to resolve the class members' claims must be

[82] *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 293 F.R.D. 287, 306 (E.D.N.Y. 2013).
[83] Defs.' Br. in Opp. at p. 29.
[84] Del. Super. Civ. R. 23(b).

adjudicated in individual minitrials."[85] This is not so. As discussed previously, isolating cases where (1) a claim was not disputed and paid late or where (2) a claim for a facility fee was disputed for purposes of obtaining documentation to determine medical necessity can be made by reference to records and objective criteria.[86]

Moreover, class members will likely have little incentive to pursue individual actions for the amounts owed as statutory interest because of "[t]he amount of statutory interest owed to a particular plaintiff is likely too small [...]."[87] In light of the fact that the principal is likely to be a higher value than the interest owed on such in most scenarios, it seems more likely that these class members would, in an individual manner, pursue non-payment of the principal, rather than the interest. In the absence of class certification, it seems likely that very few claims for statutory interest would be brought and cause the adjudication of this issue through a class action superior to no adjudication of this issue at all.[88]

VI. CONCLUSION

For the reasons stated above, Plaintiff's Motion for Class Certification is **GRANTED**. Counsel for Spine Care to submit a proposed form of order within fifteen (15) days from date of this Opinion.

IT IS SO ORDERED.

Dated: June 18, 2020
Wilmington, Delaware

/s/ Eric M. Davis
Eric M. Davis, Judge

cc: File&ServeXpress

[85] Defs.' Br. in Opp. at p. 32.
[86] *See Shady Grove Orthopedic Assoc., P.A.*, 293 F.R.D. at 306.
[87] Pl.'s Op. Br. at p. 28 (citing *Bulmash*, 257 F.R.D. at 91).
[88] Pl.'s Op. Br. at p. 29 (citing *Gunnells v. Healthplan Serv., Inc.*, 348 F.3d 417, 426 (4th Cir. 2003) (internal quotation omitted)).